

RECEIVED

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALABAMA

LEONARD P. HACKETT, JR.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

Monty W. Ervin and
Patricia D. Ervin,
Petitioner[s]

v.

UNITED STATES OF AMERICA ET AL
Respondent[s]

)
)
)
) 1:06-MC-3331- MEF-DRB
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)
)
)

**PETITIONER[S] RESPONSE TO UNITED STATES
MOTION TO DISMISS & COURT ORDER TO SHOW
CAUSE**

Comes now Monty W. Ervin and Patricia D. Ervin, Petitioner[s], and files this
DECLARATION in Response to the United States *Motion to Dismiss* and states in
support;

1. On July 26, 2006 Petitioner[s] filed a Petition in this court to Quash, eleven,
Internal Revenue Service 2039 administrative summon[s] listed in the Petition
to Quash and herein incorporated by reference.

2. On September 15, 2006 Respondents filed their Motion to Dismiss for insufficient service of process.
3. Petitioner[s] when filing the Petition to Quash with the Clerk of Courts requested summons from the clerk to perfect service. Your clerk of courts refused to issue the appropriate summons, stating that the certificate of service would be adequate. Petitioner[s] confirmed the clerks instruction via a letter to the clerk dated July 28, 2006, (copy enclosed Marked exhibit A) and filed in record.
4. Petitioner[s] following the legal advise and instructions of the clerk of courts perfected service upon the U.S. Department of Justice and the Commissioner of the Internal Revenue Service, see exhibits B, B1, B2, B3.
5. On September 15, 2006, Leura G. Canary, United States Attorney filed a Motion to Dismiss the Petitioner[s] Petition to Quash the 2039 Summons thereby verifying that service was in fact perfected.
6. The United States Attorney has failed to read and/or understand The Rules of Court because once she goes on the offensive she has waived deficiency of service.


Wherefore, Petitioner[s] pro se, being advised by the Clerk of Courts that a certified mailing of the Petition to Quash was appropriate and sufficient without a summons, did follow the clerks advise and perfected service pursuant to instructions. Petitioner asserts that the respondent counsel being an accomplished attorney should

know that lack of evidence (declaration/affidavit of a competent witness) deprives the court of its discretion to grant a motion to dismiss. Petitioner relies on the constitutional requirement that Notice must be reasonably calculated under the circumstances to apprise the defendant of the suit. The Respondent's, Motion to Dismiss, being timely filed verifies that notice was indeed sufficient and the lack of competent evidence in support of respondents motion to dismiss for insufficient service renders the Motion to Dismiss moot.

Petitioner therefore request that the respondent's Motion to Dismiss be denied as moot, and that petitioners Petition to quash be granted.

September 23, 2006

Respectfully Submitted

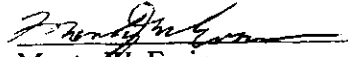

Monty W. and Patricia D. Ervin
P.O. Box 7044
Dothan, AL 36302

I, Monty W. Ervin certify that a true and accurate copy of the foregoing
Petitioner[s] Response to United States Motion to Dismiss & Court order to Show
Cause, and ORDER was placed in the U.S. Mail on ^{4th} day of 2006, addressed to

October

Internal Revenue Service
202 West Adams Street Suite 2,
Dothan, AL 36303

U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington D.C. 20044-0683


Monty W. Ervin
P.O. Box 7044
Dothan, AL 36302

**IN THE UNITED STATES DISTRICT COURT MIDDLE
DISTRICT OF ALABAMA**


Monty W. Ervin and)	
Patricia D. Ervin,)	
Petitioner[s])	
)	1:06-MC-3331- MEF-DRB
v.)	
)	
UNITED STATES OF AMERICA ET AL)	
Respondent[s])	

**DECLARATION OF Monty W. Ervin,
IN SUPPORT OF PETITIONER[S] RESPONSE TO UNITED
STATES MOTION TO DISMISS & COURT ORDER TO
SHOW CAUSE**

I, Monty W. Ervin, make this declaration under penalty of perjury and state;

1. That on July 26, 2006 Patricia D. Ervin and declarant filed a Petition to Quash eleven IRS 2039 administrative summon[s].
2. That on July 27, 2006 declarant realized that the clerk had inadvertently left off the case number from petitioner[s] copy.
3. That on July 27, 2006 declarant returned to the Clerk of Courts office to confirm the case number and to procure the appropriate summons.
4. That on July 27, 2006, declarant was told by the assisting clerk that summons were not required for the action files.
5. That on July 27, 2006 declarant was told by the assisting clerk that the certificate of service would be sufficient.
6. That on July 27, 2006 declarant did place a true and accurate copy of the Petition to Quash, points and authorities and ORDER in the U.S. mail certified return receipt requested.
7. That the U.S. Mail Service Forms 3811 have been returned and copies subsequently filed as exhibits B 3 to the Petitioner[s] Response.

Further Monty W. Ervin declares naught:


Monty W. Ervin
P.O. Box 7044
Dothan, AL 36302

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

Monty W. Ervin, and
Patricia D. Ervin
Petitioner

Vs

UNITED STATES OF AMERICA, and
Commissioner of Internal Revenue Service,
Respondent

CASE 1:06-MC-3331-MEF-DRB

ORDER

Whereas, this matter comes to the attention of the District Court by Petition to Quash the eleven 2039 Administrative Summon[s] listed in the Petition to Quash and incorporated herein and this court being fully advised in the premises do order the following Summons Quashed and direct the IRS agent Tyson use discretion and restraint in her dealing with the public.

SO GRANTED this _____ day of _____ 2006.

District Court Judge

United States District Court - Middle District of Alabama


Attn: Clerk

July 28, 2006

Per our visit yesterday we were told that we could not use the Summons in a Civil Action for this case. We were told that the Certificate of Service would be adequate. Enclosed find the Certificate of Service. Please add this to our file. Please let us know if there is a charge for this so that we may send you the payment. Thank you,

Monty W. Ervin & Patricia D. Ervin

case # 1:06MC 3331-F


Patricia D. Ervin

2 attachments to be added to our file

Exhibit "A"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

Monty W. Ervin, and
Patricia D. Ervin
Petitioner

CASE# 1:06MC 3331-F

Vs.

UNITED STATES OF AMERICA, and
Commissioner of Internal Revenue Service,
Respondent

CERTIFICATE OF SERVICE was hindered on the Petition to Quash, Points and authorities, and ORDER on July 26, 2005 as CASE # was inadvertently left off the documents to be served. I, Monty W. Ervin certify that service was completed on this the 27th day of July by placing in the United States Mail with certified return receipt # listed below.

UNITED STATES OF AMERICA U.S. Department of Justice
CERTIFIED MAIL # 7006 0100 0000 0733 1871

Commissioner of Internal Revenue Service c/o Attn: Susan Tyson
CERTIFIED MAIL # 7006 0100 0000 0733 1864


Monty W. Ervin

Exhibit "B"

Att: 1

U.S. Postal Service

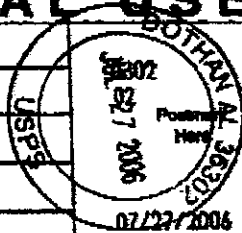
CERTIFIED MAIL - RECEIPT

(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.83
Certified Fee	\$2.40
Return Receipt Fee (Endorsement Required)	\$1.85
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.08



Sent to: ~~Settlement of Estate of Andrew~~
 U.S. Dept. of Justice
 P.O. Box 683, Ben Franklin Station
 Washington, D.C. 20044-0683

U.S. Postal Service

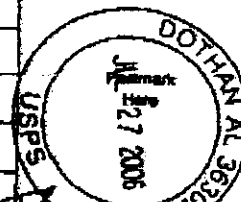
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$6.08



Sent to: ~~Settlement of Estate of Andrew~~
 U.S. Dept. of Justice
 P.O. Box 683, Ben Franklin Station
 Washington, D.C. 20044-0683

Exh. 6.7 "B1"

Att. 2

UNDER COVER OF THIS LABEL

Complete this label and attach to the back of the package so that we can insure the card to you. Attach this card to the back of the package or on the flap if space permits.

Article Addressed to:
Alabama Middle District
Court
Att. Clerk
PO-Box 711
Montgomery AL
36101

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number: 7006 0100 0000 0733 1895
(Transfer from service label)

Form 3811, February 2004 102505-02-1540

5697 EELO 0000 0010 7006

Exhibit "B 2"

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: Commissioner of Internal Revenue Service ATTN: Susan Tyson 202 West Adams St. Suite 2 Dothan, AL 36303</p>		<p>B. Received by (Printed Name) _____ C. Date of Delivery 7-28</p>	
<p>2. Article Number (Transfer from service label) 7006 0100 0000 0733 1864</p>		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>	
<p>h99T EE2D 0000 00T0 9002</p>		<p>102595-02-M-15-10</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: United States of America U.S. Dept. of Justice P.O. Box 683 Ben Franklin Station Washington D.C. 20044-0683</p>		<p>B. Received by (Printed Name) _____ C. Date of Delivery AUG 01 2006</p>	
<p>2. Article Number (Transfer from service label) 7006 0100 0000 0733 1871</p>		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>	
<p>102595-02-M-15-10</p>		<p>102595-02-M-15-10</p>	

Exhibit "B 3"